ASSOCIATION MÉDICALE CANADIENNE / CANADIAN MEDICAL ASSOCIATION

CMA POLICY

THE TREATING PHYSICIAN'S ROLE IN HELPING PATIENTS RETURN TO WORK AFTER AN ILLNESS OR INJURY

(UPDATE 2013)

Executive Summary

This policy addresses the role of the treating physician in assisting their patients return to work after an illness or injury. The treating physician's role is to diagnose and treat the illness or injury, to advise and support the patient, to provide and communicate appropriate information to the patient and the employer, and to work closely with other involved health care professionals to facilitate the patient's safe and timely return to the most productive employment possible. Fulfilling this role requires the treating physician to understand the patient's roles in the family and the workplace. Furthermore, it requires the treating physician to recognize and support the employee-employer relationship and the primary importance of this relationship in the return to work. Finally, it requires the treating physician to have a good understanding of the potential roles of a return-to-work coordinator and of other health care professionals and employment personnel in assisting and promoting the return to work.

Introduction

The CMA recognizes the importance of a patient returning to all possible functional activities relevant to his or her life as soon as possible after an injury or illness. Prolonged absence from one's normal roles, including absence from the workplace, is detrimental to a person's mental, physical and social well-being. The treating physician should therefore encourage a patient's return to function and work as soon as possible after an illness or injury, provided that a return to work does not endanger the patient, his or her co-workers or society. A safe and timely return to work benefits the patient/employee and his or her family by enhancing recovery and reducing disability. A safe and timely return to work by the employee also preserves a skilled and stable workforce for employers and society and reduces demands on health and social services as well as on disability plans.

In recent years, an increasing level of responsibility in the return-to-work process has been placed on treating physicians. There has been an increased demand for medical information and advice from physicians and other health care providers concerning patient functionality, restricted work and modifications to the workplace to help accommodate the disabled patient. [1] There has also been a blurring of the lines between the

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provision of forms/reports for benefits and dealing with requests for information related to helping patients return to work (e.g., completing Functional Abilities Forms). Treating physicians are often asked to provide information related to complex issues affecting patients in the workplace and to assist in the eligibility of insurance claims while lacking information related to job description or the insurance company's definition of disability.

There is also the issue of consent, where employers/insurers are asking employees to sign "blanket consents," which include information well outside what is medically necessary to determine eligibility to return to work. In addition, the complex nature of the return-to-work process can lead to conflict between employees, physicians, and employers. Finally, the majority of physicians outside occupational medicine have not received training on the return-to-work process and thus may feel uncomfortable providing these types of services.

Cooperation from the employee, employer, insurer and health care provider is necessary to ensure a safe and timely return to work for the patient. The purpose of this statement is to address the role of the treating physician in the patient's return to work. A treating physician refers to a physician from any medical specialty – including a family physician – who preferably knows the patient the best. The CMA supports a shift away from reliance on physician certification for work absences and a move toward greater cooperation between the employee and his or her employer with the use of medical input, advice and support from the employee's treating physician and other involved health care professionals.[2]

Although this policy addresses the treating physician's role in helping patients return to work after an illness or injury, many of the concepts are applicable to accommodating employees who are in need of a modified work arrangement with their employer.

The Role of the Employer

The employee and the employer generally have an established relationship and this is central to the return-to-work process. In all cases of impairment or disability, an unbiased workplace supervisor, manager or employer representative must be a closely involved partner in this process.

Employers increasingly recognize the value of making changes to the workplace than can facilitate a return to work. The employer's role is to ensure that the workplace culture supports a safe and timely return to work; for example, by being flexible in modifying tasks, schedules and environmental conditions to meet the temporary or permanent needs of the employee. Employees are often unaware of their employer's capacity to accommodate special needs. Direct communication by an employee with his or her employer after an illness or injury often enhances the employee's perception of his or her ability to work. With careful planning and appropriate physician input and advice to both the employee and the employer, an employee may often successfully return to work before full recovery.

The employer and employee have a responsibility to provide the treating physician with any employment-related information that can be useful in giving medical advice and support. It is the employer's responsibility to provide the treating physician with a written job description, identifying the job risks and available work modifications, upon request.

The Role of the Treating Physician

The treating physician's role in helping a patient return to work has four main elements:

1. Providing to the patient medically necessary services related to the injury or illness to achieve optimum health and functionality;
2. Providing objective, accurate and timely medical information for the consideration of eligibility of insurance benefits;

3. Providing objective, accurate and timely medical information as part of the timely return-to-work program; and[3]
4. Considering whether to serve as a Timely Return-to-Work Coordinator when requested by the employer/employee or other third party (outlined below).

In relation to the first three elements, the treating physician should remain cognizant of the potential for legal proceedings and should, therefore, ensure, as always, that any statements made regarding a patient's capacity to return to work are defensible in a court of law. The physician should ensure that any statements made are, to the best of the physician's knowledge, accurate and based upon current clinical information about the patient[4]. If the physician relies on information that cannot be substantiated independently, then the physician should note in the report the source of the information and the fact that it has not been independently confirmed. Comments unrelated to the treating physician's professional opinion or that are extraneous to the stated objectives should not be included in the report. Reports should be written in language that is appropriate for the intended audience. This may require the physician to avoid medical short forms, or jargon. Where this is not possible, the physician should include, in addition to technical medical terminology, more colloquial terms or explanations to ensure the reader understands the report's contents. Where the physician is not able to answer some of the questions, even with the assistance of the patient, the physician should indicate his or her inability to respond.

For more information with respect to completing forms and reports, please refer to Canadian Medical Protective Association articles entitled "Forms and Reports: The Case for Care (2002)"[5] and "Reasonable Delays for Filling out Insurance Forms (2007)."[6]

Considerations for Treating Physicians who wish to Participate in the Timely Return-to-Work Process

Treating physicians need to ensure that a timely return–to-work plan is incorporated into the care plan for their patient. A timely return-to-work program is one that is initiated early and ensures a safe return to work at the earliest and most appropriate time. The treatment or care plan should be evidence-based, when possible, and should identify the best sequence and timing of interventions for the patient.

The treating physician should facilitate the patient's return to work by encouraging him or her early in treatment or rehabilitation to take an active role in and take responsibility for the return to work, and to communicate directly and regularly with his or her employers. Furthermore, the physician should discuss expected healing and recovery times with the patient, as well as the positive role in physical and psychological healing of a graduated increase in activity.

Unnecessary waiting periods and other obstacles in the care plan should be identified and discussed, when relevant, by those involved in the patient/employee's return to work. In some cases, it may be appropriate for the treating physician to advise the patient that a timely return to work can facilitate his or her recovery by helping to restore or improve functional capabilities. The physician should be familiar with the family and community support systems available to the patient. Moreover, the physician should be knowledgeable about and use, when appropriate, the services of a multidisciplinary team of health care professionals, who can be helpful in facilitating the patient's safe and timely return to work. In cases of employers with occupational medical departments, the treating physician, with the patient's prior expressed consent, may contact the occupational physician or nurse to understand specific workplace policies, supportive in-house resources, essential job demands and possible health and safety hazards in the patient's workplace. Where occupational medical resources are available, the treating physician generally assumes a supportive or advisory medical role. For assistance with specific cases, provincial and territorial medical associations and the Occupational Medicine Specialists of Canada, as well as the Occupational and Environmental Medicine Association of

Canada, have information identifying physicians who specialize in assisting with the return to work. [7] In complex cases, the treating physician should consider referring the patient/employee to medical specialists or other appropriate health care professionals for a comprehensive, objective assessment of his or her functional capabilities and limitations and their relation to the demands of the employee's job.

The Return-to-Work Coordinator

The CMA supports the concept of the return-to-work coordinator as described in the Ontario Medical Association Position Paper, "The Role of the Primary Care Physician in Timely Return to Work."[8] A return-to-work coordinator may be a health care professional who "works with the employer and the patient/employee to assist in developing and overseeing a timely return to work program that is individualized to the employee and meets the requirements of the employer. A return to work plan or program is "a compilation of services required to safely and effectively return an individual to work as soon as possible." [9] Return to work requires that the employee's capabilities match or exceed the physical, psychological and cognitive requirements of the work offered. It may involve designing a modified work setting and timetable to facilitate reintegration in the workplace based on the patient's physical and psychological condition.

Specific services of the return-to-work coordinator may include:

- Compiling all medical information, along with the employee's workplace and job functions information.
- Providing advice on the limitations, restrictions and modifications that may be necessary to accommodate the employee in a timely return–to-work program.
- Periodically reviewing the prescribed program and suggesting modifications until the patient eventually assumes full-duty status or has resumed work in a modified manner acceptable to all parties.

The treating physician has the *choice* to assume this role or it may be assumed by an alternate health care provider. It is the employer/insurer's responsibility to ensure that a health care provider is assigned to this role. The treating physician also has the choice to suggest the patient/employee undergo a functional capacity assessment or an independent medical examination (IME). Treating physicians should only provide such services if they have the necessary training and expertise. The CMA believes educational sessions should be provided to support treating physicians who feel they need them and who wish to assume the role of the timely return-to-work coordinator.

If the treating physician agrees to participate in developing a modified work plan, the physician should consider and make recommendations related to the employee's task limitations, schedule modifications, environmental restrictions and medical aids or personal protective equipment. Whenever possible, the physician should state whether restrictions are permanent or temporary and give an estimate of recovery time. The physician should also specify the date when the patient's progress and his or her work restrictions need to be reassessed.

The treating physician must be aware of the risks to the patient, his or her coworkers or the public that could arise from the patient's condition or drug therapy. If the patient's medical condition and the nature of the work performed are likely to endanger the safety of others significantly, the physician must put the public interest before that of the patient/employee.

When the treating physician, acting as a return-to-work coordinator, believes that the patient has recovered sufficiently to return to work safely, the patient should be clearly informed of this judgment. If the employer and the employee cannot agree on a return-to-work plan, the employer should contact the treating physician and employee to identify the minimum level of capability that can be accommodated in the workplace.

When there is a conflict between the employer and

the employee, it is recommended that the treating physician use, where available, the skills of an occupational physician. The CMA recommends that, when conflicts occur, conflict-resolution processes be put in place to address all participants' concerns. The treating physician's role should be limited to providing relevant clinical information about the functional limitations of the employee and recommending any corresponding work restrictions.

Ultimately, the employer determines the type of work available and whether a physician's recommendations concerning an employee's return to work can be accommodated. Under provincial and territorial human rights laws, an employer may not discriminate on the basis of disability or other illness and has legal obligations with respect to the accommodation of employees. For details, refer to the Human Rights Code in the relevant jurisdiction.

The CMA holds that legislation should be enacted in all jurisdictions to protect physicians from liability associated with such decisions.

Respecting Patient Confidentiality and Managing Medical Information

Medical records are confidential. Physicians must respect the patient's right to confidentiality except where required or permitted by law to disclose requested information. In general, physicians should not, without the patient's consent, give information to anyone concerning the condition of a patient or any service rendered to a patient, unless required by law to do so. For example, in some cases, provincial or territorial legislation may require physicians to provide information to workers' compensation boards without prior patient approval. Physicians should be aware of the legal requirements with regard to prior patient approval and of the legal requirements in their province or territory. Where a physician has the discretion to make a disclosure (i.e., where it is permitted by law but not required), the decision should be made bearing in mind the duty of confidentiality and the facts of the case. Physicians will want to consider if it is appropriate under the circumstances to advise the patient when a disclosure has been made pursuant to applicable legislation.[10]

In circumstances where a physician provides a third party with information or an opinion for an individual he/she is not otherwise treating (for example during an IME mandated by the employer), the duty to provide the individual with access to the information, opinion and or notes prepared for the opinion will vary according to the applicable law, the nature of the agreement with the third party and the consent of the individual. Physicians should be aware that their working notes may be, in some circumstances, accessible to an individual being examined for the purpose of a third-party process. Physicians conducting an IME and preparing a report on behalf of a third party should ensure the individual being examined understands the nature and extent of the physician's responsibility to the third party, including that the report will be forwarded to this third party. Moreover, an IME is distinct from a regular physician-patient encounter and, as such, it does not obligate the independent examiner to treat or provide health care to the examinee. However, should the medical examiner discover an unexpected significant clinical finding which requires essential intervention, then he or she should advise the examinee of this fact to enable the examinee to obtain timely medical attention. The treating physician should not provide information about the patient to the patient's employer without the patient's authorization. The following are best practices when obtaining patient consent:

- Consent should be specific rather than general;
- Written authorization for such disclosure is desirable and may be required in some jurisdictions;
- A separate patient consent should be obtained for each request for medical information; and
- Patient consent should be considered time-limited.

To respect the privacy of the patient, the treating physician should be careful not to provide medical

information that is not needed to facilitate the patient's return to work. The patient has the right to examine and copy medical records that pertain to him or her. Patient access to records may be denied only in accordance with the exceptions specified under the relevant privacy legislation, such as reasonable risk of serious harm, solicitor-client privilege or identification of another person. The treating physician should ensure that he/she is familiar with the applicable legislation and rules with respect to a patient's right of access. If access is denied and the patient challenges the treating physician's decision, the onus is on the physician to justify denial of access.

Treating physicians should consult appropriate statements from the relevant provincial or territorial licensing body and from the Canadian Medical Protective Association for additional information and guidance. Physicians should also be aware of any relevant legislation or other legal requirements in their jurisdictions.

Billing for Return-to-Work Services

Many services related to a timely return-to-work program are not covered by public medical insurance. Although often the case, patients should not be required to cover the costs of services related to a timely return-to-work program. The CMA recommends that the requesting party bear these costs.[11] Payment should be commensurate with the degree of expertise and the time expended by the physician and office staff. The physician should consult the billing policy of his/her provincial medical association for further guidance.

[1] Ontario Medical Association, *The role of the primary care physician in timely return to work*. OMA position paper. Ontario Medical Review, March 2009. https://www.oma.org/Resources/Documents/2009PCPandTimelyReturn.pdf

[2] Canadian Medical Association, *Short-Term Illness Certificate*, 2010. http://policybase.cma.ca/dbtw-wpd/Policypdf/PD11-06.pdf

[3] The College of Physicians and Surgeons of Ontario, Third Party Forms, Update 2012. https://www.cpso.on.ca/uploadedFiles/policies/policies/policyitems/ThirdParty.pdf

[4] The College of Physicians and Surgeons of British Columbia, Medical Certificates policy, Update 2009. https://www.cpsbc.ca/files/u6/Medical-Certificates.pdf

[5] Canadian Medical Protective Association, Forms and Reports: *The Case for Care*, Update 2008. http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/infosheets/2002/com_is0227-e.cfm

[6] Canadian Medical Protective Association, Reasonable Delays for Filling out Insurance Forms, 2007. http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/infoletters/2007/com_il0720_2-e.cfm

[7] See also Presley Reed, *The Medical Disability Advisor: Workplace Guidelines for Disability Duration*, Reed Group, As amended. and the American College of Occupational and Environmental Medicine, *Guidelines in Preventing Needless Work Disability,* 2006. http://www.acoem.org/PreventingNeedlessWorkDisability.aspx.

[8] Ontario Medical Association, *The role of the primary care physician in timely return to work*. OMA position paper. Ontario Medical Review, March 2009. https://www.oma.org/Resources/Documents/2009PCPandTimelyReturn.pdf

[9] Ontario Medical Association, *The role of the primary care physician in timely return to work*. OMA position paper. Ontario Medical Review, March 2009. https://www.oma.org/Resources/Documents/2009PCPandTimelyReturn.pdf

[10] Canadian Medical Association, Principles for the Protection of Patients' Personal Health Information. 2004, http://policybase.cma.ca/dbtw-wpd/Policypdf/PD11-03.pdf

[11] Canadian Medical Association, Third Party Forms: The Physician's Role (Update 2010). http://policybase.cma.ca/dbtw-wpd/Policypdf/PD11-04.pdf